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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

MPH TECHNOLOGIES OY,

Case No. 3:18-cv-05935-TLT

Plaintiff.

vs.

APPLE INC..

Defendant.

**DECLARATION OF JAMES D.
MITCHELL IN SUPPORT OF
PLAINTIFF'S MOTION TO
SHORTEN TIME TO HEAR
UNOPPOSED MOTION FOR AN
EXPEDITED CASE STATUS AND
MANAGEMENT CONFERENCE**

Place: San Francisco Courthouse,
Courtroom 9
Judge: Hon. Trina L. Thompson

1 I, James D. Mitchell, declare as follows:

2 1. I am an attorney with the law firm of Lee Sheikh & Haan LLC, counsel for Plaintiff
3 MPH Technologies Oy (“MPH”). I am licensed to practice law in the State of Illinois. I have personal
4 knowledge of the matters stated herein and am competent to testify thereto. I submit this declaration in
5 support of Plaintiff’s Motion to Shorten Time to Hear Unopposed Motion for an Expedited Case Status
6 and Management Conference.

7 2. On April 15, 2024, MPH emailed the Courtroom Deputy, while copying Apple, stating
8 that it believed the parties would benefit from, and requested, guidance from the Court on whether the
9 Court would issue an order directing the parties to submit the further joint case management status
10 report identified in the Court’s Standing Order for Patent Cases. Following the Apple’s response and
11 MPH’s reply email, the Courtroom Deputy informed both parties that the request had been “brought
12 [] to chambers’ attention and [was] awaiting a response/directive as how to proceed.” Attached hereto
13 as **Exhibit A** is a true and correct copy of the April 15–17, 2024 email chain between the Courtroom
14 Deputy and counsel for all parties.

15 3. On June 7, 2024, counsel for the parties spoke on the phone to discuss, among other
16 things, Apple’s willingness to stipulate to requesting that the Court set the case for further case
17 management, and whether Apple would stipulate to a expediting briefing and argument on a motion
18 for further case management. Apple stated during that phone call, and in a follow-up email on June 10,
19 2024, that it did not stipulate to MPH’s request for further case management, and would not agree to
20 an expedited hearing on MPH’s Motion for an Expedited Case Status and Management Conference,
21 providing no explanation for why it would not agree to an expedited hearing. Apple confirmed its
22 positions in a June 12, 2024 email. Attached hereto as **Exhibit B** is a true and correct copy of the June
23 10–12, 2024 email chain between counsel for MPH and counsel for Apple.

24 4. While MPH’s *Partially Agreed Motion for Leave to Amend Infringement Contentions*
25 has been pending, and since the Court’s claim construction ruling on January 3, 2024, MPH has largely
26 avoided conducting discovery on a number of issues with respect to the five (5) patents of the U.S.
27 Patent No. 8,346,949 family that may be impacted by the Court’s ruling on that motion.

1 5. Since the Court's claim construction ruling on January 3, 2024 declaring the U.S. Patent
 2 No. 7,937,581 ('581 patent) claims indefinite and, thus, invalid, MPH has not pursued, nor has Apple
 3 allowed, discovery solely directed to potential infringement, validity, or damages relating to the '581
 4 patent.

5 6. While MPH's *Partially Agreed Motion for Leave to Amend Infringement Contentions*,
 6 ECF No. 103, and *Motion for Reconsideration of the Court's Finding That the '581 Patent Claims Are*
 7 *Indefinite*, ECF No. 118, have been pending, MPH has vigorously pursued discovery on issues related
 8 to the lone remaining patent in the case, U.S. Patent No. 8,037,302 ('302 patent).

9 7. The parties have been at a standstill in discovery with respect to many of the issues
 10 addressed in the six (6) discovery dispute letter-motions (ECF Nos. 128, 129, 130, 131, 132, 133),
 11 which largely relate to the '302 patent, currently pending before the Court for the months leading up to
 12 the filing of the letter-motions in April 2024, and in the two (2) months that have followed.

13 8. The Court's rulings on the two substantive motions and six discovery dispute letter-
 14 motions will potentially and substantially alter the substantive and procedural scope and nature of this
 15 lawsuit, not to mention having a significant impact on the types and extents of fact and expert discovery
 16 necessary for the parties' claims, defenses and counterclaims.

17 9. MPH believes that the resolution of these discovery disputes will be necessary for the
 18 parties to complete not only the issues addressed in the motions themselves, but also other related
 19 follow-up discovery matters.

20 10. MPH further believes that guidance from the Court on the status and expected timeline
 21 for the resolution of these substantive and discovery issues is necessary to conduct meaningful and
 22 timely discovery.

23 11. The parties have previously sought five modifications to the case schedule in this case:
 24 (1) in October 2018 for Apple to respond to MPH's Complaint; (2) in February 2023 for the parties to
 25 continue the Case Management Conference; (3) in November 2023 to extend the deadline for the parties
 26 to complete mediation; (4) in December 2023 to extend the briefing schedule on MPH's *Motion for*
 27 *Leave to Amend Infringement Contentions*; and (5) in March 2024 to hear argument on MPH's *Motion*

1 *for Reconsideration* at the previously scheduled March 19, 2024 hearing on MPH's *Motion for Leave*
2 *to Amend Infringement Contentions.*

3 I declare under penalty of perjury that the foregoing is true and correct and that this Declaration
4 was executed this 14th day of June, 2024 in Chicago, Illinois.

5
6 /s/ James D. Mitchell
7 James D. Mitchell
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